

REMARKS

1. The Examiner's restriction is acknowledged and invention I, Claims 1-13, drawn to a heat exchanger is elected. The Examiner states in the restriction requirement that inventions I and II are related to each other as product and process of use. The Examiner states that the two are distinct because the product as claimed can be used in a materially different process of using that product, such as an evaporator or automobile radiator. The Examiner further states that the inventions have acquired a separate status in the art, as shown by their different classifications and their "recognized divergent subject matter." The restriction requirement is traversed.

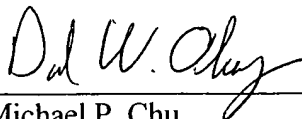
In imposing this restriction requirement, the burden is on the Examiner to provide an example. The Examiner states that "the product as claimed may be used in a materially different process of using that product such as an evaporator or automobile radiator." *See* Office Action mailed October 9, 2002, p. 2, lines 12-13. Applicants claim that the downflow condensers of the present invention may be used for many heat exchange applications, including evaporators and automobile radiators. These applications are not materially distinct, however, since they all provide for condensing of a vapor into a liquid and provide for the exchange of heat between two fluid media. The Examiner's example fails, and the Examiner is respectfully requested to withdraw the restriction requirement as between a product and a process.

2. The Examiner has further required a species restriction between the species illustrated in Fig. 4 and the species illustrated in Fig. 9, on the grounds that they are patentably distinct. Applicants traverse the requirement and elect species I, claims 1-6. Applicants note that even if there is more than one patentably distinct species, they are entitled to claim a reasonable number of species. 37 C.F.R. § 1.146. It should not be unduly burdensome for the Examiner to consider claims to both the two-pass and four-pass versions of the present invention. The Examiner is therefore respectfully requested to withdraw the species restriction requirement.

3. Applicants have traversed both restriction requirements, as to the product/process restriction and the species restriction. Applicants have elected Invention I, the product, and species I, as depicted in Fig. 4 and as claimed in claims 1-6. The Examiner has not given a convincing example of how the product as claimed may be used in a materially different process. The Examiner has thus not borne the burden of distinguishing between the product and process

of the present invention. Furthermore, Applicants are entitled to a reasonable number of species of such a product, even if the species are patentably distinct. The Examiner is respectfully requested to withdraw the restriction requirements.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "David W. Okey", is written over a horizontal line.

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